IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7645 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARMANBHAI A PATEL

Versus

GENERAL MANAGER (ADMN.)

Appearance:

1. Special Civil Application No. 7645 of 1999

MR RR VAKIL for Petitioner No. 1

MR DEEPAK V PATEL for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 20/01/97 passed by the respondent Corporation, at

Annexure `A' to the petition, whereby the petitioner was placed in the minimum pay-scale of Rs.1640 - 2900 and an amount of Rs.38,136/- was ordered to be recovered from the petitioner towards loss caused to the respondent Corporation. The petitioner has also challenged the order dated 04/02/99 passed by the Executive Director of the respondent Corporation, whereby the Appeal of the petitioner, against the aforesaid order, was also rejected.

2.0 The petitioner was working as an Assistant Manager with the respondent Corporation. It was alleged against the petitioner that there were `road losses' in the quantity of wheat and rice brought to the go-down by the transport Contractor and that he deliberately issued passes to the Contractor very late. On the basis of the aforesaid allegations, charge sheet was issued to the petitioner and inquiry was initiated. By order dated 20/01/97, penalty as aforesaid was imposed on the petitioner.

2.1 Feeling aggrieved by the said order of penalty, the petitioner preferred Appeal before the Executive Director of the respondent Corporation. The said Appeal was also rejected by order dated 04/02/99. Hence, this petition.

3.0 Mr.R R Vakil learned advocate for the petitioner has submitted that by imposing a penalty of putting the petitioner in the minimum pay-scale of Rs.1640 - 2900, fourteen years service of the petitioner has been wiped out. He has submitted that the respondent Corporation has committed an error, inasmuch as at the most the petitioner should have been put in the minimum pay-scale of Rs.2000 - 3500 and not in Rs.1640 - 2900. Therefore, by imposing a penalty of putting the petitioner in the minimum pay-scale of Rs.1640 - 2900, gross injustice has been done to him.

3.1 Mr.Vakil has further submitted that apart from the aforesaid major penalty, the penalty of recovery of Rs.38,136/- towards the loss caused to the respondent Corporation, amounts to a double penalty. He has, therefore, submitted that assuming that the allegations made against the petitioner are proved, even then the penalty which is imposed on the petitioner is disproportionate as it amounts to double penalty.

4.0 Mr.D V Patel learned advocate for the respondent Corporation has contended that under the Rules of the respondent Corporation, it is open for the Corporation to

impose the aforesaid penalties. He has submitted that in view of the Rules at Annexure `E' to the petition, Minor / Major penalties can be imposed on an employees. Therefore, the penalty imposed is just and proper.

4.1 Mr.Patel for the respondent Corporation has relied upon a decision of the Apex Court in the case of Commissioner of Rural Development & ors. v. A.S.Jagannathan reported in (1999) 2 SCC 313, wherein it was held that the Tribunal had no jurisdiction to interfere with the punishment imposed by the disciplinary authority. The Tribunal has purported to interfere on the ground that three punishments cannot be imposed for the same charge. This view cannot be sustained. The order of recovery of loss caused on account of respondent's negligence and misconduct, is permissible under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and also under the Tamil Nadu Pension Rules, the former permitting recovery from pay and the latter permitting recovery from pensionary benefits after retirement. In that case, the Apex Court set aside the order of the Tribunal on the ground that the Tribunal had no authority to interfere with the penalty imposed by the Disciplinary Authority.

4.2 In the present case, under Article 226 of the Constitution of India, this Court can interfere with the judgment in the present case.

4.3 Mr.Patel for the respondent Corporation has also relied upon a decision of the Apex Court in the case of Union of India & anr. v. G.Ganayutham reported in 1997 (7) SCC 463. Paras 27 and 33 of the said decision are relevant, which reads as under;

"27. We are of the view that even in our country - in cases not involving fundamental freedoms - the role of our courts / tribunals in administrative law is purely secondary and while applying Wednesbury and CCSU principles to test the validity of execution action or of administrative action taken in exercise of statutory powers, the courts and tribunals in our country can only go into the matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests. The choice of the options available is for the authority; the Court / tribunal cannot substitute its view as to what

is reasonable."

"33. In Ranjit Thakur this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B.C.Chaturvedi v. Union of India a three Judge Bench said the same thing as follows; (SCC p.762, para 18)

"18. ...The High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the disciplinary authority / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof."

Similar view was taken in Indian Oil Corpn. Ltd. v. Ashok Kumar Arora that the Court will not intervene unless the punishment is wholly disproportionate."

5.0 In above view of the matter, Mr.Patel for the respondent Corporation has contended that this Court must not substitute the penalty, as this is not a rarest of the rare cases, where this Court should exercise its extraordinary jurisdiction.

6.0 After hearing the learned advocates for the parties and having gone through the averments made in the petition, I am of the opinion that the penalty imposed on the petitioner is disproportionate to the allegations levelled him. The petitioner has explained his position and looking to the circumstances prevalent at that time, it was beyond the control of the petitioner to verify the loss which was caused to the respondent Corporation. However, since the misconduct has been proved and five years have elapsed since the alleged date of the incident, I am not disturbing the finding of the Inquiry Officer as well as that of the Disciplinary Authority. But, with a view to see that the petitioner is not

penalized heavily, I remand the matter back to the respondent Corporation with the following directions;

6.1 The respondent Corporation will consider the fact that the petitioner is not penalized for all the three penalties; i.e. if the petitioner is to be placed in the minimum pay-scale, then he should be placed in the minimum pay-scale of Rs.2000 - 3500 and not in the pay-scale of Rs.1640 - 2900.

6.2 If the petitioner is penalized for his negligence by placing him in the minimum pay-scale, then he should not be further penalized for loss due to his negligence and there may not be recovery of Rs.38.136/-, as it would amount to a `double penalty'.

6.3 The respondent Corporation will consider the fact that the petitioner is imposed with any of the ONE penalties in the interest of justice.

6.4 With the above directions, this petition stands partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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